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SENATE BILL NO. 116

Offered January 11, 2012

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A BILL to amend and reenact §§ 19.2-349, 19.2-354, 46.2-395, and 46.2-416 of the Code of Virginia, relating to timeframe for payment of court fines or costs, etc.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-349, 19.2-354, 46.2-395, and 46.2-416 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; duties of Department of Taxation.

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 45 30 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the penalties and provisions of § 18.2-186.3.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor

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59 and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and
60 unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit
61 and district court. The report shall include the procedures established by the Department of Taxation and
62 the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid
63 fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the
64 Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence
65 of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures
66 established by the Department of Taxation and the State Compensation Board.

67 § 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in
68 installments or upon other terms and conditions; community work in lieu of payment.

69 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of
70 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a
71 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to
72 make payment of the fine, restitution, forfeiture, or penalty and costs within ~~fifteen~~ 30 days of
73 sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any
74 costs which the defendant may be required to pay in deferred payments or installments. The court may
75 authorize the clerk to establish and approve the conditions of all deferred or installment payment
76 agreements, pursuant to guidelines established by the court. As a condition of every such agreement, a
77 defendant who enters into an installment or deferred payment agreement shall promptly inform the court
78 of any change of mailing address during the term of the agreement. If the defendant is unable to make
79 payment within ~~fifteen~~ 30 days of sentencing, the court may assess a one-time fee not to exceed ~~ten~~
80 ~~dollars~~ \$10 to cover the costs of management of the defendant's account until such account is paid in
81 full. This one-time fee shall not apply to cases in which costs are assessed pursuant to § 17.1-275.1,
82 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8 or 17.1-275.9. Installment or deferred
83 payment agreements shall include terms for payment if the defendant participates in a program as
84 provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered,
85 shall proceed in accordance with § 19.2-358.

86 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
87 any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in
88 any work release, home/electronic incarceration or nonconsecutive days program as set forth in
89 § 53.1-60, 53.1-131, 53.1-131.1 or 53.1-131.2 to either make full payment or make payments in
90 accordance with his installment or deferred payment agreement while participating in such program. If,
91 after the person has an installment or deferred payment agreement, the person fails to pay as ordered,
92 his participation in the program may be terminated until all fines, costs, forfeitures, restitution and
93 penalties are satisfied. The Director of the Department of Corrections and any sheriff or other
94 administrative head of any local correctional facility shall withhold such ordered payments from any
95 amounts due to such person. Distribution of the money collected shall be made in the following order of
96 priority to:

97 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall
98 be disbursed according to the terms of such order;

99 2. Pay any fines, restitution or costs as ordered by the court;

100 3. Pay travel and other such expenses made necessary by his work release employment or
101 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

102 4. Defray the offender's keep.

103 The balance shall be credited to the offender's account or sent to his family in an amount the
104 offender so chooses.

105 The Board of Corrections shall promulgate regulations governing the receipt of wages paid to
106 persons participating in such programs, the withholding of payments and the disbursement of appropriate
107 funds.

108 C. The court shall establish a program and may provide an option to any person upon whom a fine
109 and costs have been imposed to discharge all or part of the fine or costs by earning credits for the
110 performance of community service work before or after imprisonment. The program shall specify the
111 rate at which credits are earned and provide for the manner of applying earned credits against the fine
112 or costs. The court shall have such other authority as is reasonably necessary for or incidental to
113 carrying out this program.

114 D. When the court has authorized deferred payment or installment payments, the clerk shall give
115 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant
116 to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

117 E. The failure of the defendant to enter into a deferred payment or installment payment agreement
118 with the court or the failure of the defendant to make payments as ordered by the agreement shall allow
119 the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures and
120 penalties.

121 § 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

122 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
123 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
124 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
125 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,
126 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of
127 § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or § 18.2-266 into an alcohol
128 safety action program.

129 B. In addition to any penalty provided by law, when any person is convicted of any violation of the
130 law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to
131 provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully
132 assessed against him, or fails to make deferred payments or installment payments as ordered by the
133 court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways
134 in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs,
135 forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after having his license
136 suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement
137 under § 19.2-354 that is acceptable to the court to make deferred payments or installment payments of
138 unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court, the defendant's driver's
139 license shall thereby be restored. If the person has not obtained a license as provided in this chapter, or
140 is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any
141 motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

142 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
143 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
144 pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent
145 to the person written notice of the suspension of his license or privilege to drive a motor vehicle in
146 Virginia, effective 45 30 days from the date of conviction, if the fine, costs, forfeiture, restitution, or
147 penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be
148 provided to the person at the time of trial or shall be mailed by first-class mail to the address certified
149 on the summons or bail recognizance document as the person's current mailing address, or to such
150 mailing address as the person has subsequently provided to the court as a change of address. If so
151 mailed on the date of conviction or within five business days thereof, or if delivered to the person at the
152 time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to
153 avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date.
154 No other notice shall be required to make the suspension effective. A record of the person's failure or
155 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,
156 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or
157 on the failure to make a scheduled payment.

158 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other
159 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall
160 cause to be sent to the person written notice of the failure and of the suspension of his license or
161 privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the
162 notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the
163 suspension by paying the full amount owed by cash, cashier's check or certified check prior to the
164 effective date of the suspension if the notice is mailed by first class mail to the address provided by the
165 person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice,
166 the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or
167 certified check, unless otherwise ordered by the court, for good cause shown.

168 D. If the person pays the amounts assessed against him subsequent to the time the suspended license
169 has been transmitted to the Department, and his license is not under suspension or revocation for any
170 other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the
171 person on presentation of the official report of the court evidencing the payment of the fine, costs,
172 forfeiture, restitution, or penalty.

173 E. Any person otherwise eligible for a restricted license may petition each court that suspended his
174 license pursuant to this section for authorization for a restricted license. A court may, upon written
175 verification of employment and for good cause shown, authorize the Department of Motor Vehicles to
176 issue a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of
177 § 18.2-271.1. No restricted license may be issued unless each court which suspended the person's license
178 pursuant to this section provides authorization for a restricted license. Such restricted license shall not be
179 issued for more than a six-month period. No restricted license issued pursuant to this subsection shall
180 permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License
181 Act (§ 46.2-341.1 et seq.).

182 The court shall forward to the Commissioner a copy of its authorization entered pursuant to this
183 section, which shall specifically enumerate the restrictions imposed and contain such information
184 regarding the person to whom such a license is issued as is reasonably necessary to identify the person.
185 The court shall also provide a copy of its authorization to the person, who may not operate a motor
186 vehicle until receipt from the Commissioner of a restricted license. A copy of the restricted license
187 issued by the Commissioner shall be carried at all times while operating a motor vehicle. Any person
188 who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be
189 punished as provided in subsection C of § 46.2-301.

190 § 46.2-416. Notice of suspension or revocation of license.

191 A. Whenever it is provided in this title that a driver's license may or shall be suspended or revoked
192 either by the Commissioner or by a court, notice of the suspension or revocation or any certified copy
193 of the decision or order of the Commissioner may be sent by the Department by certified mail to the
194 driver at the most recent address of the driver on file at the Department. If the driver has previously
195 been notified by mail or in person of the suspension or revocation or of an impending suspension for
196 failure to pay fines and costs pursuant to § 46.2-395, whether notice is given by the court or
197 law-enforcement officials as provided by law, and the Department has been notified by the court that
198 notice was so given and the fines and costs were not paid within ~~15~~ 30 days, no notice of suspension
199 shall be sent by the Department to the driver. If the certificate of the Commissioner or someone
200 designated by him for that purpose shows that the notice or copy has been so sent or provided, it shall
201 be deemed prima facie evidence that the notice or copy has been sent and delivered or otherwise
202 provided to the driver for all purposes involving the application of the provisions of this title. In the
203 discretion of the Commissioner, service may be made as provided in § 8.01-296, which service on the
204 driver shall be made by delivery in writing to the driver in person in accordance with subdivision 1 of
205 § 8.01-296 by a sheriff or deputy sheriff in the county or city in which the address is located, who shall,
206 as directed by the Commissioner, take possession of any suspended or revoked license, registration card,
207 or set of license plates or decals and return them to the office of the Commissioner. No such service
208 shall be made if, prior to service, the driver has complied with the requirement which caused the
209 issuance of the decision or order. In any such case, return shall be made to the Commissioner.

210 B. In lieu of making a direct payment to sheriffs as a fee for delivery of the Department's processes,
211 the Commissioner shall effect a transfer of funds, on a monthly basis, to the Compensation Board to be
212 used to provide additional support to sheriffs' departments. The amount of funds so transferred shall be
213 as provided in the general appropriation act.

214 C. The Department may contract with the United States Postal Service or an authorized agent to use
215 the National Change of Address System for the purpose of obtaining current address information for a
216 person whose name appears in customer records maintained by the Department. If the Department
217 receives information from the National Change of Address System indicating that a person whose name
218 appears in a Department record has submitted a permanent change of address to the Postal Service, the
219 Department may then update its records with the mailing address obtained from the National Change of
220 Address System.